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Policy-making and New Modes of Governance in the European Neighborhood Policy

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Stefan Gaenzle ♦

Abstract

Since 2002, the EU has been developing the European Neighbourhood Policy (ENP) to cope with the challenges eventually resulting from the new post-enlargement political order in Europe. The EU is keen on maintaining its borders safe and secure from trans-national risks such as illegal migration, environmental degradation and economic crisis. In order to meet these objectives, the EU promotes democratic and economic reforms in the countries located along its Eastern and Southern borders to foster political stability and security. It does so by including third state actors into a process of governance entailing various modes such as coordination, competition, negotiation and compliance. Towards the backdrop of an analysis of ENP policy-making, the paper demonstrates that the governance approach is well-equipped to grasp the internal dynamic of the European Neighbourhood Policy and identifies coordination and competition as the dominant – albeit not exclusive – modes of governance.

Keywords: European Neighbourhood Policy; new modes of governance; political order; external/security; open method of coordination (OMC)
(162 words)

I. Introduction

Since 2004, subsequent rounds of enlargement – including the most recent expansion of the Schengen area in 2007¹ – have pushed the European Union (EU)² much closer towards a ‘new neighbourhood’ – in the Southern Mediterranean, the Middle East, but most notably in Eastern Europe: Ukraine, Belarus and Moldova now share a common land border with the Union.³ In order to address challenges, such as irregular migration, repercussions of economic transition and

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political instability,⁴ which reinforce this complex neighbourhood situation, the EU started to flesh out a unique policy mix which essentially entails a sustained commitment to forge somewhat privileged relations in the future with those countries in its vicinity willing to actively participate in ENP.⁵

The European Neighbourhood Policy (ENP), henceforth, constitutes a hybrid policy which escapes any straightforward categorization.⁶ EU policy-makers are adamant in anchoring the European Neighbourhood Policy firmly in the realm of the EU's external policy (and in sharp contrast to enlargement). Thus, for the Commissioner for External Relations and the ENP, the European Neighbourhood Policy constitutes a "modern, intelligent *foreign policy*, stepping beyond traditional diplomacy of the 20th century" (Benita Ferrero-Waldner 2006; *author's translation and emphasis*). The European Neighbourhood Policy has also been described as highly path-dependent and modeled on the previous enlargement process (Magen 2006; Kelley 2006; Tulmets 2006, 2007). However, it ultimately remains distinct from both the EU's common foreign and security (CFSP) as well as enlargement policy – although it builds on a number of policies and practices inspired from its accession tool box. In short, the European Neighbourhood Policy aims at establishing another "game in town" (Prodi 2002) promoting political and economic "transition as a goal in its own right" (Landaburu 2006: 2) – thus, in short, the journey becomes the reward.

While EU membership of neighbouring countries is not an intended objective of the ENP, the Union aims at actively supporting these countries on their paths towards 'good governance', market economy and regional stability. Thus, legitimacy in the context of ENP is allegedly confined to involving partner countries in a (construed) process of 'joint governance' and 'policy ownership'. In the context of ENP, the European Union builds upon a dynamic composition of 'new' modes of governance that have been reinforced (rather than developed from scratch) in a number of internal EU policies, primarily in areas which fall within the competence of the member states, such as employment, social protection and inclusion, education, youth and training. Whereas the Community had strongly focused upon norms of compliance until the mid-1980s, just before the launch of the Single Market program, the approach has changed tremendously. With the declaration of the so-called 'open method of coordination' (OMC) as an instrument of the Lisbon strategy in 2000, new models of problem-solving have been fostered; the ultimate objective is to ensure that national regulatory logics and systems converge towards common objectives. Moreover, with the European Commission's role being limited to surveillance (and the European Parliament and Court of Justice virtually playing no role), it is the member states that are evaluated by 'equals' thus potentially exercising 'peer pressures'. Depending on the areas concerned, the open method of coordination involves 'soft law' measures which are binding on the member states in varying degrees, but which are not compliance-driven in the form of directives, regulations or decisions. Thus it requires member states to agree upon firm guidelines and timetables for achieving common goals, developing benchmarks as tools for identification of best practice, transposing European guidelines into national reform agenda as well as monitoring procedures, evaluation and peer review.

In this paper, I will argue that the European Neighbourhood Policy primarily builds on those modes of EU governance that prevail in the 'open method of coordination' (Bauer et al. 2007; Tulmets 2006; Meloni 2007) – albeit not exclusively.⁷ Hence, conceptually, *ENP can be grasped as a form of externalisation of specific modes of EU governance offering a bridge between the internal and external system of EU governance*.⁸ The first section links the concept of new modes of governance with the debate revolving around the EU's impact beyond its borders or 'Europeanization beyond Europe' (Schimmelfennig 2007). The second section briefly discusses the concepts of EU governance and Europeanization towards the backdrop of EU external relations. The third section describes the development of ENP and the fourth section analyzes the ENP policy-making process as well as the role of central actors and institutions, the European

Commission, the member states and the ENP partner countries. Finally, the fifth section unveils the dominant modes of governance in the European Neighbourhood Policy.

II. ‘Europeanization beyond Europe’ and New Modes of Governance

The stunning progress of European integration has instigated important questions about the scope and depth of the EU’s impact on its member states (Jachtenfuchs 2001; Rittberger and Kohler-Koch, 2006). Conceptually, this process has been captured by ‘Europeanization’, a term pinpointing to processes of domestic ideational, institutional and policy change that have been allegedly triggered by the EU (for an overview see Olsen 2002). Today, research on ‘Europeanization’ is at least well-established providing one of the dominant paradigms in EU integration studies. There are four approaches accounting for variations in terms of the European Union ‘hitting back home’ (Börzel and Risse 2000) to be discerned.

First, some analysts have identified the misfit between European and domestic institutional structures as a driver for domestic change (Héritier et al. 1996). Second, scholars of public administration have argued that the EU’s leverage has an impact on domestic opportunity structures triggering changes in terms of actor constellations (Schneider 2001; Knill and Lehmkuhl 2001). Third, social constructivists emphasize the role of socialization and persuasion in generating new preferences for (non-)compliance (Checkel 1999, 2001; Radaelli 2004; Risse 2004). Fourth, and more recently, a policy-analytical model has been proposed as an explanatory framework combining actor-centred and institutionalist elements (Knill and Lehmkuhl 2002; Knill and Lenschow 1998; 2005; Knill et al. 2008).⁹ Arguing that the potential for change at the domestic level varies with respect to distinct governance patterns, it regards “regulatory measures as the central element in the policy-making process, and national administrations as key actors in the implementation of EU regulatory policy” (Knill et al 2008: 51).

Furthermore, the concept of Europeanization is increasingly being used to explain the dynamics of the EU’s enlargement process (Schimmelfennig 2007; Schimmelfennig and Sedelmeier 2005a; Sedelmeier 2006). In the context of enlargement, the emblematic concept of Europeanization literally ‘went East’ and has hitherto been applied to describe processes of domestic change in candidate, applicant, or more recently, ‘neighbouring’ countries (Schimmelfennig 2007; Gänzle, Müntel and Vinokurov 2008). The conceptual extension of Europeanization raises important questions about the applicability of explanatory approaches developed within Europeanization research and their potential to cope with domestic changes in non-member states (Haverland 2006; Schimmelfennig 2007). In addition to the ‘external’ dimension of Europeanization, it is possible to distinguish a ‘logic of consequences’ from a ‘logic of appropriateness’ (March and Olsen 1989: 160ff.), which can either work through intergovernmental interactions or through trans-national processes via societal actors in the target state or region. EU conditionality, sanctions and rewards reinforce consequentiality, hence changing the cost-benefit calculations of involved or affected actors within the target state. The impact of such external incentives increases with the size of net benefits as well as the clarity and credibility of EU conditionality. In addition, actors in the target countries and regions may be persuaded to adopt EU rules provided that they consider these rules legitimate and beneficial and if they identify themselves with the EU, thus subscribing to the ‘logic of appropriateness’ (see Schimmelfennig and Sedelmeier 2005: 11f., 18). As the EU forfeits any membership carrot, it does not dispose of any stick ‘hardened by the prospect of future membership in the EU club’ either. Hence, when dealing with ENP partner countries, it must rely much more on the logic of appropriateness and more ‘indirect ways’ of influence.

Figure 1: Modes of governance and Europeanization beyond Europe

Modes of governance		External Europeanization
Compliance ('hard')	Negotiation ('hard')	Logic of consequences
Competition ('soft')	Communication ('soft')	Logic of appropriateness

It is clear that the modes of governance presented above constitute ideal types; in practice, as we will see, they are likely to be combined with each other generating rather hybrid forms. Europeanization is transposed by different modes of governance which can be grasped best as the underlying regulatory script for policy-making (Héritier 2003: 106f.). In the EU's system of multi-level governance, it involves a plethora of public, private and third sector actors; the level of institutionalization varies according to the level of governance involving actors from a global, regional, national (etc.) stage.

From an actor-centered institutionalist perspective, it is possible to discern four different modes of governance that are compliance, negotiation, competition and communication. First, *compliance* is the mode of governance which is normally associated with state(-like) entities exercising rule-making power. Compliance is usually linked with the 'sovereign' state, but also with those segments of the EU polity, where the Community has acquired state-like competences, such as monetary policy. Measures of positive integration, for instance, are typically associated with compliance-based regulations establishing the common rules for the participants of the Common Market. However, as Knill (2001) and Héritier (2003) have succinctly demonstrated, national bureaucracies of the member states tend to restrict adaptation to the absolutely necessary rather than complying with EU requirements in full – for reasons of institutional persistence and inertia. Second, the most prominent mode of governance within the EU clearly is *negotiation*. The EU itself has been described as a "system of negotiation" (Schmidt 1997) accommodating divergent interests amongst a multitude of (non-)state actors from various (national and sub-national) levels. Both compliance and negotiation strongly involve the EU level as a decision-making power, often operating in the shadow of an asymmetrical power relationship and hierarchy produced in a member state's relationship with the European Union. Third, *competition* relies on incentives and disincentives for member states to align themselves with EU standards and benchmarks. In terms of regulatory politics, competition-based measures aim to guarantee the smooth functioning of the Common Market by gradually abolishing market-distorting factors, such as non-tariff barriers to trade ('negative integration'). Finally, *communication* is a relatively loose mode of governance based on voluntary participation and adaptation. Instead of imposing legally binding rules, communication-based measures support national policy-makers looking for regulatory best-practices to solve policy problems.

III. The Making of a New Policy

The first steps leading towards ENP were taken following a letter from the British foreign minister Straw to the then Spanish Presidency of the European Union in January 2002 (Johansson-Nogués 2007). According to Straw, Ukraine, Belarus and Moldova should be offered "clear and practical incentives" for proceeding with political and economic reform and be granted the status of "special neighbour" (Comelli 2005: 13) – based on a firm commitment to democratic governance and free market principles. At this stage, the countries of the southern Mediterranean area were not yet included as potential candidates for such an inclusive approach. Meeting with the same resistance of southern EU members to Eastern enlargement throughout the 1990s (which had brought to life the 'Barcelona process') and following a Swedish initiative led by Foreign

Minister Anna Lindh, the geographical scope of the new policy was quickly broadened to include both Russia and the southern Mediterranean rim.¹⁰

In August 2002, the High Representative of the Common Foreign and Security Policy (CFSP), Javier Solana, and the EU Commissioner for External Relations, Chris Patten, addressed a joint letter to the Danish EU Presidency inviting the European Council of Copenhagen in December of that year to contemplate the “dual challenge of avoiding new dividing lines in Europe while responding to the needs from newly created borders of the Union” (Patten and Solana 2002: 1). Subsequently, Javier Solana attempted to strengthen the foreign policy perspective *vis-à-vis* the neighbourhood as the European Security Strategy, of which he presented the first draft in December 2003, declaring that “building security in our neighborhood” (European Security Strategy 2003: 7) was amongst the core strategic objectives of the EU.

At the same time and in light of the pending accession, the Task Force for the Accession Negotiations/DG Enlargement was pushed into some reshuffling and “bureaucratic politics” (Missiroli 2007: 2; Kelley 2006) which implied that several DG Commission staff had to be shifted towards other units. Because of organizational inertia, however, it was the Commissioner for Enlargement, Günter Verheugen (and not his colleague Chris Patten), who took up responsibility for the European Neighbourhood Policy. In December 2002, the European Council of Copenhagen finally approved of the idea of a ‘Wider Europe’ and the European Neighbourhood Policy. In May 2004, the European Commission published its Strategy Paper on the ENP laying out the principles and objectives that would govern all future ENP partnerships: The ENP aims at “sharing the benefits of the EU’s enlargement in 2004 with neighbouring countries in strengthening stability, security and well-being for all concerned” in order to “prevent the emergence of new dividing lines in Europe” (European Commission 2003: 4). Commission President Prodi emphasized that the “aim is to extend to this neighbouring region a set of principles, values and standards which define the very essence of the European Union” (Prodi 2002). The European Union attempted to make clear that ENP was about partnership with, and not membership in, the European Union. Still, there remained some ambivalence since Prodi declared that “[w]e have to be prepared to offer more than partnership and less than membership, without precluding the latter” (Prodi 2002).

In a nutshell, the European Neighbourhood Policy seeks to extend the “chance to participate in various EU activities through greater political, security, economic and cultural cooperation” (European Commission 2003: 3) – albeit below the membership level. If not membership, what else could be offered as an incentive? In March 2003, the Commission asserted that the EU’s neighbours should be awarded with the prospect of “a stake in the EU’s Internal Market” (European Commission 2003: 4). Subsequently, this incentive evolved into more concrete suggestions such as special Free Trade Agreements or participation in EU programmes and agencies (European Commission 2006).

Following this comprehensive step towards achieving the overarching policy goals of ENP, the Commission refined its existing country strategies. The ENP is being reshaped in order to be compatible with the existing framework of relationships between the EU and its neighbours. Each country strategy paper subsequently supplies a strategic framework for the period 2002-2006. These strategy papers set out EU cooperation goals and policy responses as well as identifying areas for cooperation which are defined as key priorities. In addition, they provide an assessment of the partner countries’ policy agendas, political and socio-economic situations. Concomitantly, the Commission drew up its first set of country reports. In May 2004, country reports were published on the first seven of the ENP countries which had Association or Partnership Agreements with the EU in force. A further five country reports were published in March 2005 on the next set of countries to be included in the policy (Georgia, Azerbaijan and Armenia), as well as with those countries whose Agreements had already come into force (Egypt and Lebanon). These reports provide an outline of the political, economic and social situation in

ENP countries and the space for future assessments on the achievements of each of the EU's partner countries.

The next stage in the development of ENP was the conclusion of ENP Action plans with each of the countries, providing the core script for the bilateral relationship. In June 2004, the Council of the EU upheld that "Action plans should be comprehensive but at the same time identify clearly a limited number of key priorities and offer real incentives for reform. Action plans should also contribute, where possible, to regional cooperation" (Council of the EU 2004a). Subsequently, a wide range of other areas have been emphasized. They jointly define an agenda of political and economic reform by means of short and medium-term priorities (between three and five years). They cover political dialogue and reform, economic and social cooperation and development, trade-related issues and market and regulatory reform, cooperation in justice and home affairs, cooperation in sectors (such as transport, energy, information society, environment, research and development) as well as a human dimension (people-to-people contacts, civil society, education, public health).

The incentives the EU offers in return for progress on relevant reforms are greater integration into governance structures of the European Union entailing European programmes and networks, increased assistance as well as enhanced market access, such as a modified Generalized System of Preferences ('GSP Plus'). Clearly, GSP Plus is one of the EU's key instruments to respond to the needs of developing as much as neighbouring countries and to promote sustainable development and good governance. In January 2006, Moldova became the first beneficiary of GSP Plus. According to EU External Relations Commissioner Benita Ferrero-Waldner, this "scheme offers indeed some better access to the European market, and it has improved also the certification and the control of origin rules, which opens the way also to a possible granting of additional autonomous trade preferences."¹¹

Finally, the implementation of mutual commitments and objectives agreed upon in the Action Plans are subject to regular monitoring by the European Commission and the partner country. In addition, the Commission issues periodic reports commenting on progress as well as shortcomings, a procedure clearly reinforcing elements of conditionality by offering regular reviews and upgrades of the relationship in exchange for compliance with jointly agreed commitments. Hence, it does not come as a surprise that the Deputy Head of Ukraine's Mission to the EU affirms that his country aims at "under-promising, but over-delivering"¹² on the terms of its objectives set in the Action Plan. In December 2006, a first set of progress reports was released by the European Commission.

Financial and budgetary issues are important aspects of policy-making. Until 2006, EU assistance to the countries covered by the European Neighbourhood Policy was channelled through various geographical programmes, such as TACIS for the New Independent States (NIS) and MEDA for the Mediterranean countries.¹³ After difficult negotiations on the financial prospective for the years 2007-2013, the Council determined that ENP was to receive a share of approximately 20 per cent of the EU's overall external action budget of €50 billion. Since 2006, financial allocations come from the European Neighbourhood and Partnership Instrument (ENPI).

Similar to the enlargement practice, assistance is set to be more flexible and 'policy-driven', designed to target sustainable development and approximation of EU policies and standards, as well as supporting the agreed-to priorities in the ENP Action Plans. One of its most innovative features is that it entails "a radical simplification to the current situation where cross-border cooperation at the external EU border is hampered by interfaces between internal and external funding instruments operating through different rules" (European Commission 2004: 3). This means that cross-border cooperation with non-EU countries will be considerably eased along the EU's external land and sea borders in the east and the south, putting partners under the same funding regime and instruments. ENPI also envisages extending forms of technical assistance to partner countries that had previously been used in the process of the CEEC's *rapprochement* towards the EU, such as Technical Assistance and Information Exchange (TAIEX), long-term

twinning arrangements with EU member states' administrations (national, regional or local), as well as participation in Community programmes and agencies. Moreover, the Commission expects that the priorities identified in the Action Plans, which are agreed to with the authorities of the country, will have a 'lighthouse effect' in terms of guiding the programming of other assistance programmes from other donor countries and institutions.

Finally, ENP was set to unfold a unique category – a “special relationship with neighbouring countries” – in the EU's relations with third countries “aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation” (Reform Treaty 2007: 18). Thus the Reform Treaty basically reiterates the wording of the ‘Treaty Establishing a Constitution for Europe’ (Art. I-57).

IV. The European Neighbourhood Policy: Institutions and Policy-making

The European Neighbourhood Policy is extremely conservative in terms of forging new institutions. In general, it relies on existing ones set up under the Partnership and Cooperation Agreement (which were developed in the first half of the 1990s to serve the NIS and are currently renegotiated with Ukraine) or Association Agreement in the case of the Mediterranean ENP countries. Only in a few cases (in particular with regard to specific security-related tasks), some temporary organizations have been created, such as the European Security and Defense Policy (ESDP) Law Mission to Georgia (Council of the EU 2004b), the EU Special Representative for Moldova or the EU Border Assistance Mission to Moldova and Ukraine (EUBAM), established at the joint request of the Presidents of Ukraine and Moldova. On the EU side, there are different actors in the lead: While the Council oversees the initiatives in Georgia and Moldova, the Commission is responsible for the border mission. Although the EUBAM is an advisory, small-scale, technical body with no executive powers, it provides training and advice to Moldavian and Ukrainian officials, reinforcing their capacity to carry out effective customs controls and border surveillance. Ultimately, it is designed to contribute to building confidence and strengthening cross-border cooperation, particularly with a view to resolving the ‘frozen conflict’ in Transnistria.

With the exception of Belarus, Libya and the Palestinian Authorities, the European Commission maintains delegations in all ENP partner countries. The delegations of the Commission provide a focal contact point, maintain extensive relations with governmental institutions and aim at increasing awareness of the European Union in the countries concerned. Furthermore, the delegations monitor and support the implementation of the ENP Action Plans. Through its European Neighbourhood Policy, the EU extends governance to encompass a variety of actors on the side of each individual ENP partner country. Members of Parliament from ENP countries regularly meet with Members of the European Parliament (as well as national parliaments from EU member states) under the umbrella of the Partnership and Cooperation Agreements (PCA). In addition to the presidential administration (in Ukraine and Moldova for example), the Ministries of Economy and Foreign Affairs assume the lead in terms of the daily interaction with the European Union. In the case of Moldova, the latter is even referred to as Ministry of Foreign Affairs and European Integration. The Department of European Integration was established in 2003 aiming “to consolidate the capacities of the national institutions in order to promote the strategic European integration priorities of the Republic of Moldova, to coordinate the implementation of the European standards on the national level as well as to make more efficient the participation in the Stability Pact South – East Europe initiatives.”¹⁴

Since 2006, twinning is available for ENP countries. Hence, the Moldovan Ministry of Economy and Trade, responsible for the overall coordination of the projects, developed into “the counterpart of the European Commission for the management of the twinning tool” (Ministry of Economy and Trade 2007: 1). Within this framework, twinning experts and civil servants from

EU member states are seconded to beneficiary administrations in order to advise their colleagues from ENP countries on various aspects of administrative reforms and approximation to the *acquis communautaire*.

European institutions, in particular the European Commission, occupy a very central role in the policy-making processes of ENP. The Commission assumes a policy entrepreneurship within ENP that comes close to its pivotal role within enlargement policy (especially prior to the start of the accession talks). The Commission is highly present when it comes to the daily management of ENP, the pioneer in drafting of both country strategy papers and, more importantly, the Action Plans. It can rely on a great deal of institutional memory given the fact that many of its services dealing with ENP today have been acquired through its experiences on the Task Force of the Accession Negotiations (1998-99) or through DG Enlargement (since 1999). Between 2003 and 2004, at a time when DG Enlargement also assumed responsibility for the European Neighbourhood Policy, some Commission civil servants were transferred from DG Enlargement to DG External Affairs (including the former Head of the Commission negotiation team for the Czech Republic, Michael Leigh). In the fall of 2004, Benita Ferrero-Waldner took the helm of a portfolio that was renamed 'External Relations and European Neighbourhood Policy' – thus giving the ENP a very clear direction, and probably contributing to increased 'enlargement/ENP' thinking in the field of external relations. By all means, the ENP provides the Commission with an additional arena to increase its profile and acquire informal competence in foreign policy areas, which are primarily associated with the Council of Ministers or the member states.

Clearly, any strategic decision in terms of ENP, whether it is the question of extending the scope of membership (to encompass the Caucasian Republics) or deciding on financial allocations, has to involve the member states, in particular the General Affairs Council. Country reports as well as Action Plans, drafted by the Commission and agreed upon jointly with each ENP country, are submitted to the General Affairs Council which decides whether to proceed to the next stage of relations. Furthermore, the European Council as well as its presidency provides additional guidelines as well as input. For instance, the German government announced in the summer of 2006 that it was planning to 'use' its EU Council Presidency in the first half of 2007 to implement a more comprehensive European 'Eastern Policy'. In this context, the role of the new EU member states cannot be underestimated. Poland – together with Lithuania – has played an important role in orchestrating the EU's approach to Ukraine since the Orange Revolution. During the 'revolution' itself, both Eastern EU countries were of key importance in getting the High Representative of the CFSP involved. Furthermore, the Baltic States play an important role in providing advice and support to post-Soviet governments, such as in Georgia, for anything relating to market economic reform and good governance (as well as securing independence and sovereignty) in the immediate vicinity of a hostile regional power such as the Russian Federation. In 2007, Lithuania and Moldova agreed to "join efforts to develop a new framework for special contractual relations between the Republic of Moldova and the European Union that will provide a clear long-term perspective of accession, pursuant to Article 49 of the Treaty on European Union" (Government of Lithuania and Government of Moldova 2007). Furthermore, there are also many members of the European Parliament from the new EU countries that are far more willing to take a critical stance *vis-à-vis* Russian (domestic as much as foreign) politics.

In sum, the European Commission, together with the European Parliament, is well-positioned to explore and suggest policy ideas (for instance the proposal to include the Caucasus in the ENP). The Parliament drafted several reports on the state and prospect of ENP and took credit for the inclusion of the countries of the Caucasus in the Neighbourhood Policy "at the insistence of the European Parliament" (European Parliament 2005: 14). Furthermore, the Parliament has provided a platform to leaders of ENP countries, in particular the President of Ukraine, Victor Yushchenko, to express his hopes for further European integration of his country – beyond the offer of ENP. In general, the European Parliament has taken a very supportive view

with regards to the membership aspirations of the European partner countries in ENP. Members of the Parliament have been in favour of contemplating the inclusion of Central Asian countries into ENP, in particular Kazakhstan. Overall, the Parliament is only loosely associated with policy-making processes within ENP and struggle to re-emphasize its co-decision authority in allocating the ENPI budget (as the Commission proposed to decouple the European Neighbourhood Policy from the ENPI budget).

Hence it is sometimes difficult to clearly attribute specific policy measures to either of the two central European institutions, the Council and the Commission, with regards to ENP. However, at this early stage of the policy it is obvious that the Council defines the major rules, and the Commission plays the game – at least at the operational level. Furthermore, the new member states are likely to assume a major role when it comes to the issue of long-term sustainability of the European Neighbourhood Policy as a very unique policy area and arena within the EU's external relations.

V. The European Neighbourhood Policy and New Modes of Governance

It is clear that various forms of negotiations have increased under the umbrella of ENP. Since the ENP builds upon existing agreements between the EU and the partner country in question (Partnership and Cooperation Agreements, or Association Agreements in the framework of the Euro-Mediterranean Partnership), these negotiations take place on both a horizontal axis linking various European institutions with one another and a vertical axis including (non-)member states' governments, political parties, and public opinion. On the horizontal level, the Commission and the Council (through the Partnership and Cooperation Council and Association Council), but also the European Parliament and 'semi-organs' (such as the Committee of the Regions or the ECOSOC) are part of the deliberations concerning the European Neighbourhood Policy. Negotiations, defining short-term and medium-term objectives within the ENP partnership, are goal-driven in the sense that both representatives from the EU and the ENP country discuss the scope of reform into which each partner country ultimately wishes or is capable to engage. The European Commission is eager to emphasize that the ENP Action plan "[...] is fully negotiated and mutually agreed at the political level. It is not an imposition by either side, but an agreed agenda for common work" (European Commission 2006: 3). At the same time, negotiations on ENP Action Plans mirror individual countries' preferences *vis-à-vis* the extent and policy breadth of the ENP. Furthermore, negotiations can also take place involving individual EU member states and ENP countries: Poland and the Baltic States are a case of new EU members taking more interest in their immediate Eastern neighbours. Clearly, these negotiations can be formal as well as informal; however, by all means they rely on arguments as much as the promise of tangible benefits from engaging into this specific kind of relationship.

Given the absence of fully-fledged legal accountability, *compliance* does not constitute a strong feature of ENP. One may argue at best that some of the *negotiations* take place in the shadow of hierarchy, where the partner countries expect future benefits – including the prospect of membership – in exchange for anticipated compliance. Ultimately, the level of compliance in the European Neighbourhood Policy is underpinned by domestic conditions in each of the partner countries and the interest of each individual government in subscribing to these goals. It is for these reasons that Commission officials emphasize that "successful participation in the ENP requires that the pace of convergence to the EU and the internal process of economic reform are matched" (Dodini and Fanitini 2006: 530) – and eventually in line with expectations of other International Financial Institutions. Still, the ENP entails various elements and instruments to make 'compliance' an attractive policy goal for the partner countries. In terms of the bilateral relationship, such as the application of GSP Plus, the development of "deep and comprehensive free trade agreements" (European Commission 2006: 4), visa facilitation, or participation in EU policies and agencies, the ENP makes any further improvement contingent upon convergence

towards EU norms and standards. Similar to the practice in enlargement policies, it sets up monitoring procedures (regular reports) that scrutinize progress and shortcomings in various policy sectors. Most of the achievements in recent EU-Ukraine relations, like the opening of negotiations on visa facilitation and readmission agreements, are pursued in a very hierarchical manner, where Ukraine is required to adjust to EU expectations and standards. Ultimately, any negotiation between the European Union and each ENP country is embedded in an asymmetrical power relationship which puts the EU in a superior position.

The EU would like to see its neighbours adopt values such as the rule of law, democracy and respect for human rights and minority rights in accordance with the norms and standards set forth by the Council of Europe (as in the case of Ukraine) and the Organization for Security and Cooperation in Europe (OSCE) (i.e. political pluralism, freedom of speech and media, respect for the rights of persons belonging to national minorities, non-discrimination on grounds of gender, politics, religion or ethnicity). The ENP Action Plan encourages a wide range of initiatives in interregional and cross-border cooperation arrangements involving the sub-national level(s), targeting public health, fostering local democracy and civil society as well as building strong national education programmes.

As for *competition*, the ENP aims at the establishment of two different frameworks: a first one between the ENP countries themselves, and a second between the EU and the ENP countries. The first one subscribes to a long standing ('declaratory') EU foreign policy practice which is to frame regional or sub-regional cooperation (in virtually every part of the world) as a primary stepping stone towards closer relations with the European Union. The formation of the Visegrad group of states, comprising Poland, the Czech Republic, Slovakia and Hungary, founded in the early 1990s, was a response to this EU foreign policy goal. Similarly, the European Neighbourhood Policy was set up as a comprehensive framework inspired from the inclusive approach of the European Conference agreed upon at the end of the 1990s. An example for the second approach is the establishment of "a policy dialogue between EU and Ukrainian authorities in the field of education and training" (EU-Ukraine Action Plan 2004: 39). The Action Plan encourages Ukraine to fully subscribe to the objectives of the Bologna Process in higher education, ensuring the compatibility of the Ukrainian university system with that of EU member states.¹⁵ The 'Bologna club' may be interpreted as a way to increase non-compliance driven benchmarking efforts and mutual learning processes within and outside the European Union. In this respect the European Neighbourhood Policy absorbs modes of governance that have been introduced by the open method of coordination.

Since the establishment of the European Neighbourhood Policy, there has been a significant increase of 'networks' (Lavanex 2004) seeking to facilitate and improve cooperation and *communication* amongst the participating partners. One of the key mechanisms for driving EU-inspired external reforms resides with the "perspective of moving beyond cooperation to a significant degree of integration, including a stake in the EU's Internal Market and the possibility for Ukraine to participate progressively in key aspects of EU policies and programmes" (EU-Ukraine Action Plan 2004: 2). Yet it is not only the ENP countries which will benefit from closer forms of inclusion in EU programmes and policies. In the case of Ukraine, the EU aims at getting access to the country's Antonov fleet in order to cope with its weak capabilities *vis-à-vis* its airlift capabilities and to boost its credibility in terms of ESDP. Thus, the success of ENP will ultimately depend on the stakes both partners hold in this process.

VI. Conclusion

Although the ENP is a very new and dynamic EU external policy, (increased) competition and communication between the EU and the ENP countries – embedded in an asymmetrical power relationship – constitute the dominant modes of governance. While the European Commission has stressed the open-endedness and the partnership approach, negotiations – at the level of the

ENP Action plans – occur in the shadow of hierarchy as some of the ENP countries clearly expect the relationship to evolve into future membership. Through the lens of the governance school, it is this silent imposition of compliance that brings ENP much closer to the enlargement path. Most dominant within ENP, however, are soft modes of governance, such as competition and, in particular, communication. The overall framework of ENP lumping together fourteen countries has a competitive edge where each country may seek to set itself ahead of the others on scoreboards used by the Commission services in order to assess success in various policy areas. At the same time that most of the ENP countries have not responded positively to this comprehensive approach, and seek instead to increase the bilateral component of ENP.

It is too early to say whether ENP can be grasped in terms of new trans-national modes of governance. What can be learned from the analysis is that different modes are far from being subject to a binary logic; instead, they must be perceived as closely interlinked. In this respect, we may assume that comparisons of modes of governance in one policy area, such as external relations, will allow drawing some conclusions about how the European Union interacts with the ‘outside’. It will further our understanding of particular dynamics and patterns of EU-third country relationships. While the modes of governance in the realm of ENP are not new, the dynamic composition of the governance mix is surprising. While ENP relies heavily on coordination and competition, compliance and negotiations are far from being absent.

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1 The Schengen area of passport-free travel within was extended on 21 December to encompass the Mediterranean (Malta, with the exception of Cyprus) and Central and Eastern European countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) which joined the EU in 2004.

2 In general, I use the term EU to refer to the European Union after the introduction of the Maastricht Treaty. ‘European Community (EC)’ specifically refers to the first pillar of the European Union or the time prior to the Treaty of Maastricht.

3 Although the European Neighborhood Policy encompasses countries from Eastern Europe, the Middle East and the Southern Mediterranean rim, I will primarily focus on the ENP governance relationship involving Ukraine and Moldova.

4 These matters are often referred to as soft security issues. According to Moroff (2002b: 13), soft security comprises non-military and non-strategic issues with a potential cross border impact (that do not involve inter-state violence), like international crime, pollution, nuclear safety, communicable diseases and illegal migration. It can also refer to anything that destabilises a country in such a way that it becomes a threat to its neighbours or other third countries, such as extreme asymmetries in living standards, weak rule of law, and the things that flow from that, i.e. corruption, crime and refugees.

5 Algeria, Israel, the Palestinian Authority, Armenia, Jordan, Syria, Azerbaijan, Lebanon, Tunisia, Ukraine, Egypt, Moldova, Georgia, Morocco have been promoted to the rank of ‘ENP partner’ countries. Because of their weak democratic records, Libya and Belarus, however, have not yet been admitted to the ENP.

6 Insert comment Balzac et al.

7 On the OMC in general, see Hodson and Maher (2001); for its applications in the EU’s external relations, see Meloni (2008).

8 The concept ‘external governance’ though – as used by Lavanex (2004) – may be misleading as it implicitly suggests that there are two different categories entailing internal and external governance.

9 They distinguish three modes of governance underlying EU regulatory policies: compliance, competition and communication.

10 After his election as the new French President in May 2007, Nicolas Sarkozy promised to step up the efforts to create a 'Mediterranean union' within ENP, thus fostering the links with southern neighbours of the Mediterranean rim.

11 Ahto Lobjakas, "Moldova: EU Officials Say Union Membership Hopes Are Premature", RFE/RL, Brussels, 11 April 2006.

12 Interview of the author with Kostiantyn Yelisieiev, Deputy Head of Ukraine's Mission to the EU, Brussels, 30 May 2005.

13 These programs include TACIS (for its eastern neighbours and Russia) and MEDA (for its southern Mediterranean neighbours), as well as thematic programmes such as European Initiative for Democracy and Human Rights (EIDHR). The budgetary period covering 2000-2006 releases funds of approximately €5.3 billion for MEDA and €3.1 billion for TACIS; in addition the European Investment Bank lends approximately €2 billion to MEDA beneficiary countries and €500 million to TACIS beneficiary countries.

14 Website of the Ministry of Foreign Affairs and European Integration on 'European integration', <http://www.mfa.md/european-integration/> (accessed on June 5, 2007).

15 Ukraine joined the 'Bologna club' together with the other eastern ENP countries Armenia, Azerbaijan, Georgia and Moldova in May 2005.

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